

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ITALIANA COKE, S.R.L.,	:	
	:	08-CV-4725 (JGK)
Plaintiff,	:	
	:	Electronically Filed
v.	:	
UNITED COAL COMPANY, LLC,	:	
	:	
Defendant.	:	
	:	

**NOTICE OF MOTION TO DISMISS, TRANSFER OR STAY PROCEEDINGS**

PLEASE TAKE NOTICE that upon the annexed declaration of Brian D. Sullivan, dated June 30, 2008, and the exhibits thereto, the Memorandum of Points and Authorities in support of Defendant United Coal Company, LLC's ("United Coal") Motion to Dismiss, Transfer or Stay the Proceedings, and upon all the prior pleadings and proceedings had herein, United Coal will move this Court before the Honorable John G. Koeltl, United States District Court Judge, at the United States Courthouse located at 500 Pearl Street New York, New York, for an Order:

(1) Pursuant to Federal Rule of Civil Procedure 12(b)(2), dismissing this action in its entirety for lack of personal jurisdiction. United Coal has not transacted business in New York, nor does it have the requisite minimum contacts with New York to satisfy constitutional due process requirements; or

(2) Pursuant to Federal Rule of Civil Procedure 12(b)(3), dismissing this action in its entirety for improper venue. The "substantial part of the events" giving rise to this action took place outside of New York, and venue is appropriate only in the Eastern District of Virginia; or

(3) Pursuant to 28 U.S.C. §§ 1404 & 1406, transferring this case to the Eastern District of Virginia, Norfolk Division. Plaintiff has alleged that it entered into an agreement with a Virginia company, and that the performance of that contract was to occur in Norfolk, Virginia; or

(4) Staying this action until the Eastern District of Virginia has had the opportunity to decide whether the "first filed" rule applies to this case, and whether the court in the Eastern District of Virginia should resolve the dispute between these parties.

Dated: New York, New York  
July 1, 2008

Respectfully submitted,



Edmund M. O'Toole (EO-7939)  
Michael C. Hartmere (MH-6839)  
VENABLE LLP  
1270 Avenue of the Americas, 25<sup>th</sup> Floor  
New York, New York 10020  
Phone: (212) 953-3388  
Fax: (212) 307-5598  
[emotoole@venable.com](mailto:emotoole@venable.com)  
[mchartmere@venable.com](mailto:mchartmere@venable.com)

Brian L. Schwalb  
(*pro hac vice application pending*)  
Meredith L. Boylan (MB-2718)  
VENABLE LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004-1601  
Phone: (202) 344-4356  
Fax: (202) 344-8300  
[blschwalb@venable.com](mailto:blschwalb@venable.com)  
[mlboylan@venable.com](mailto:mlboylan@venable.com)